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Herrera Challenges Constitutionality of Insurance 'Gender Rating' in California

Insurance Industry Practice of Charging Women Up to 39% More for Health Care Coverage Called Discriminatory, Unconstitutional

SAN FRANCISCO (Jan. 27, 2009)—City Attorney Dennis Herrera today filed suit to strike down provisions of state law that permit gender rating, a practice by health insurers and health care service plans that can force women to pay a significant premium or price differential based solely on their gender. The 13-page pleading filed in San Francisco Superior Court this morning alleges that such rating practices by health insurers deny women their right to equal protection under the California Constitution, and asks the court to declare the discriminatory laws void and enjoin state officials from enforcing them.

Today's lawsuit makes good on a Dec. 18 notice of intent Herrera sent to California Attorney General Edmund G. Brown Jr., Insurance Commissioner Steve Poizner and Department of Managed Health Care Director Lucinda Ehnes informing them of the City's plans to file the constitutional challenge. On Jan. 14, State Sen. Mark Leno (D-San Francisco) introduced legislation to prohibit gender rating by health insurance companies in California, which could, depending on the outcome, obviate Herrera's legal challenge.

"Women who are priced out of private health coverage by insurance companies' discriminatory practices are often forced to rely on public hospitals and clinics instead," said Herrera. "So, gender rating isn't simply unfair to women—it's unfair to all taxpayers who are forced to subsidize health insurers' discriminatory pricing schemes. I am grateful to Sen. Leno for his leadership in pursuing a legislative fix that can hopefully remove the need for the City's lawsuit. But it is clear we need to act now to end a practice that imposes an unfair and unconstitutional burden on too many women in California."

"During these difficult economic times, when more women are losing their jobs, and employers are likely to cut their health care plans, we must protect fair access to health care in the individual market," said Sen. Leno. The Senator's bill, SB 54, to end gender rating in California, could be heard in the State Senate as early as February.

Both Herrera's litigation and Leno's legislation apply only to individual health care service plans and policies; employer-sponsored plans are already prohibited from charging men different premiums than women in California. A report by the National Women's Law Center issued last September found that California women under the age of 55 pay up to 39 percent more for insurance than men. The study looked at insurance coverage for women at ages 25, 40 and 55.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

CITY AND COUNTY OF SAN
FRANCISCO, a charter city and county,

Plaintiff,

vs.

STEVE POIZNER, in his official capacity
as State Insurance Commissioner;
LUCINDA EHNES in her official
capacity as Director of the State
Department of Managed Health Care;
STATE OF CALIFORNIA; and DOES 1
through 10,

Defendants.

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF.**

(CAL. CODE CIV. PROC. § 1060.)

INTRODUCTION AND SUMMARY OF ALLEGATIONS

1. California, like most states, is facing a growing health insurance crisis. As the cost of health insurance increases, employers are cutting back on health coverage for employees and their dependents. And, in the current economy, an increasing number of people are losing their jobs and employer-sponsored health coverage, forcing them into the individual insurance market where coverage is expensive and often limited. Many Californians are therefore faced with a difficult choice: purchase high-priced individual policies that offer less coverage and high deductibles, or join the millions of Californians without health insurance.

2. The prohibitive cost of individual insurance plans—a major factor in this crisis—is substantially exacerbated by state statutes that explicitly allow health insurance companies to engage in a practice known as "gender rating."

3. "Gender rating" is a discriminatory practice that allows insurance companies selling health insurance plans to individual consumers to charge different monthly premiums based solely on the sex of the consumer.

4. Because of gender rating, women who purchase health insurance on an individual basis have to pay markedly higher monthly premiums—up to 39% higher—than similarly situated men.

5. Although many states—including New York, Massachusetts, and Oregon—bar health insurance companies from engaging in gender rating, California statutes expressly permit health insurers to engage in the discriminatory practice of gender rating.

6. Over one million California women who currently obtain their health insurance through the individual market, and countless women who may seek individual health insurance in the future, are adversely affected by the unfair and discriminatory practice of gender rating. Due to the current economic crisis, the number of individuals losing their employer-sponsored health care coverage is expected to rise, causing more California women to become vulnerable to the practice of gender rating.

1 7. Gender rating discriminates against California women on the basis of sex, penalizes them
2 for seeking preventive care, and dramatically increases their expenditures for health coverage that is
3 already extremely expensive. Due to the practice of gender rating, women under 55 years of age
4 pay substantially more for health insurance than similarly situated men. These inflated health
5 insurance premiums force many women to choose between forgoing health coverage or accepting
6 an insurance plan with less coverage or a higher deductible. The financial pressures caused in part
7 by gender rating thus cause women to forgo the preventive care and screening exams vital to their
8 long-term health.

9 8. The discriminatory practice of gender rating affects thousands of San Francisco citizens.

10 9. Gender rating has a negative fiscal impact on the City and County of San Francisco
11 ("City") because it increases the number of uninsured persons to whom the City provides free or
12 reduced-cost medical care. Uninsured women are less likely to receive recommended preventive
13 interventions such as mammograms and Pap smears and are more likely to present with breast and
14 cervical cancer at a later stage of illness. The costs of caring for these women, who now have a
15 disease that could have been prevented or caught at an earlier stage and that is more expensive to
16 treat as a result, often falls to the City.

17 10. Gender rating also strains the City's public health resources by increasing the number of
18 persons who rely on public services for medical care. Gender rating also worsens existing public
19 health risks. By discouraging women from seeking preventive care, gender rating undermines the
20 public health mission of the City, which depends on such care to prevent the occurrence and spread
21 of infectious and chronic disease in its citizens.

22 11. The State of California has unlawfully enacted and enforced statutes that explicitly allow
23 health insurers to engage in the discriminatory practice of gender rating.

24 12. These statutes violate the equal protection guarantees of the California Constitution, and
25 contravene the State's own public policies in favor of preventive health care and affordable health
26 coverage for *all* Californians.

27 13. Pursuant to California Code of Civil Procedure section 1060, the City seeks a declaration
28 that state laws permitting gender rating by health insurers violate the equal protection guarantee of

1 the California Constitution, and requests that the Court issue an injunction prohibiting the State
2 from enforcing these discriminatory laws.

3 **PARTIES**

4 14. Plaintiff City and County of San Francisco ("the City") is a charter city and county
5 existing and organized under the Constitution and laws of the State of California.

6 15. Defendant Steve Poizner, sued in his official capacity as Insurance Commissioner for the
7 State of California ("Insurance Commissioner"), is charged with overseeing the California
8 Department of Insurance, which administers the insurance industry's business operations within
9 California. The Insurance Commissioner regulates how insurance companies market and
10 administer their policies and has various enforcement, licensing, and other responsibilities. The
11 Insurance Commissioner is responsible for regulating some health insurance plans, including
12 Preferred Provider Organizations (PPOs). As Insurance Commissioner, Mr. Poizner is charged
13 with enforcement of the State's laws regulating the insurance industry, including those laws and
14 regulations that allow health insurance providers to discriminate on the basis of sex with respect to
15 the price of health insurance.

16 16. Defendant Lucinda Ehnes, sued in her official capacity, is the Director of the California
17 Department of Managed Health Care (DMHC). The DMHC regulates Health Maintenance
18 Organizations (HMOs), and also some PPOs. As Director of the DMHC, Ms. Ehnes administers
19 and enforces State laws and regulations allowing health insurance providers to discriminate on the
20 basis of sex with respect to the price of health insurance.

21 17. Defendant State of California ("the State") is a state organized and existing under the
22 Constitution of the State of California and the Constitution of the United States of America.

23 18. Defendants Does 1-10 are charged by law with the duty of enforcing the California
24 Insurance Code and California Health & Safety Code provisions challenged herein.

25 **FACTUAL BACKGROUND**

26 **A. The Health Insurance Crisis In California**

27 19. Health insurance coverage is crucial to both individual and public health. Uninsured
28 persons are often unable to access private medical services, and must instead rely on public clinics

1 and emergency services. As a result, uninsured persons frequently receive less preventive medical
2 care and suffer worse health than those with insurance. In addition, lack of health insurance can be
3 an extreme—and potentially bankrupting—financial burden for the uninsured and their families.
4 The growing number of uninsured persons has serious consequences for public health systems,
5 including the overuse and overcrowding of their emergency treatment facilities.

6 20. Despite the importance of health insurance, many Californians do not have health
7 coverage. Approximately five million adult (ages 19-64) Californians are uninsured.
8 Approximately 83,000 San Franciscans under the age of 65 are uninsured.

9 21. A significant proportion of California's uninsured are adult women. Over two million
10 California women between the ages of 19 and 64 lack any health insurance coverage. Many of
11 these women are forced to go without health coverage because of its prohibitive cost.

12 22. Californians obtain health insurance through two avenues. Most obtain their coverage
13 through group health plans, such as employer-provided or subsidized plans, in which the employer
14 pays for all or part of its employees' monthly health insurance premiums.

15 23. The millions of Californians who do not have access to a group health plan must purchase
16 health insurance on an individual basis in order to obtain coverage. The insurers selling this
17 coverage set a monthly premium rate based on a number of criteria, including sex, age, preexisting
18 conditions, and other factors.

19 24. Many Californians face the prospect of losing their employer-sponsored health coverage
20 due to the current economic crisis.

21 25. Health insurance purchased on the individual market is often prohibitively expensive,
22 especially for individuals who have suffered from serious medical conditions prior to seeking
23 coverage. Even many middle class families are unable to afford the high cost of individual health
24 insurance.

25 26. As a result, many Californians either purchase insurance with limited coverage or high
26 deductibles, or go without health insurance entirely. And for those Californians who can afford to
27 purchase individual health insurance policies, even small increases in health insurance premiums
28 may force them to reduce their coverage, increase their deductible, or completely forgo insurance.

1 27. This is especially true for women in California. Women are more likely to be part-time
2 employees reliant on the individual health insurance market, and are less likely to be able to afford
3 high monthly health insurance premiums.

4 **B. Gender Rating In California And Its Disproportionate Impact On Women**

5 28. California law prohibits insurers from considering the applicant's race, color, national
6 origin, ancestry, religion, marital status, or sexual orientation in determining whether to offer
7 insurance, the scope of coverage, and the rates charged to individual consumers. (Health & Saf.
8 Code § 1365.5; Ins. Code § 10140.) California law prohibits this even if statistical and actuarial
9 data indicate that it costs more to insure individuals based solely on these characteristics.

10 29. By contrast, California law explicitly allows health insurers to discriminate solely based
11 on sex.

12 30. Health & Safety Code section 1365.5 provides, in pertinent part:

13 The terms of any contract shall not be modified, and the benefits or coverage of
14 any contract shall not be subject to any limitations, exceptions, exclusions,
15 reductions, copayments, coinsurance, deductibles, reservations, or premium,
16 price, or charge differentials, or other modifications because of the race, color,
17 national origin, ancestry, religion, sex, marital status, sexual orientation, or age
18 of any contracting party, potential contracting party, or person reasonably
19 expected to benefit from that contract as a subscriber, enrollee, member, or
20 otherwise; *except that premium, price, or charge differentials because of the*
21 *sex or age of any individual when based on objective, valid, and up-to-date*
22 *statistical and actuarial data are not prohibited.* (Health & Safety Code
23 § 1365.5, subd. (b), emphasis added.)

24 31. Similarly, Insurance Code section 10140 provides, in pertinent part:

25 No admitted insurer, licensed to issue life or disability insurance, shall fail or
26 refuse to accept an application for that insurance, to issue that insurance to an
27 applicant therefor, or issue or cancel that insurance, under conditions less
28 favorable to the insured than in other comparable cases, except for reasons
applicable alike to persons of every race, color, religion, sex, national origin,
ancestry, or sexual orientation. Race, color, religion, national origin, ancestry,
or sexual orientation shall not, of itself, constitute a condition or risk for which
a higher rate, premium, or charge may be required of the insured for that
insurance. *Unless otherwise prohibited by law, premium, price, or charge*
differentials because of the sex of any individual when based on objective,
valid, and up-to-date statistical and actuarial data or sound underwriting
practices are not prohibited. (Ins. Code § 10140, subd. (a), emphasis added.)

32. Through these statutes, the State expressly condones the practice of gender rating by
health insurance companies.

1 33. The practice of gender rating allows health insurance companies to charge women higher
2 monthly premiums for individual health insurance policies based solely on their sex—an immutable
3 characteristic.

4 34. Nonetheless, the State permits health insurance companies to use the unfair and
5 discriminatory practice of gender rating. As a result, women in California pay up to 39% more in
6 monthly health insurance premiums than similarly situated men. This large discrepancy in
7 premiums holds true for policies that exclude maternity coverage.

8 **C. The Deleterious Impact Of Gender Rating On Women In California**

9 35. By allowing health insurance companies to discriminate based on sex, the State
10 disproportionately harms California women. Many women in California depend on the individual
11 health insurance market for coverage and are less likely than are men to be able to afford higher
12 premiums.

13 36. Women are more likely than men to be part-time employees and therefore more likely to
14 rely on the individual health insurance market in order to obtain coverage.

15 37. In addition, women generally earn less money than men, amplifying the effect of the
16 higher monthly premiums charged by health insurance companies that engage in gender rating.

17 38. Because of the artificially inflated cost of health insurance caused by the practice of
18 gender rating, many women are forced to go without health coverage or to purchase health
19 insurance with limited coverage or high deductibles. These uninsured or underinsured women may
20 not be able to afford non-emergency medical care, including the routine health screening exams
21 necessary for early diagnosis and treatment of such diseases as cervical, uterine, and breast cancers.
22 As a result, these women are denied access to preventive care and screening exams that are vital to
23 their long-term health.

24 39. Because uninsured and under-insured women frequently lack access to adequate
25 preventive care, they are more likely than those with insurance coverage to be hospitalized for
26 avoidable health problems, to be diagnosed at later stages of a disease, and to forgo necessary
27 medical care or prescription medication to treat their health problems. By unlawfully making the
28

1 cost of health insurance more expensive for women, the practice of gender rating seriously
2 jeopardizes the health of California women.

3 40. In short, the State hurts not only the pocketbooks but also the health of California women
4 by permitting health insurance companies to engage in the unfair and discriminatory practice of
5 gender rating.

6 **D. The Impact of Gender Rating On San Francisco**

7 41. The City, through its Department of Public Health (SF-DPH), operates San Francisco
8 General Hospital Medical Center (SF General), Laguna Honda Hospital and Rehabilitation Center,
9 and over 15 primary care health centers.

10 42. SF-DPH's mission is to meet the health needs of all San Franciscans. To that end, SF-
11 DPH provides primary care, specialty care, acute care, home care, long-term care, and emergency
12 care to individuals throughout the City, regardless of whether they have health insurance.

13 43. SF-DPH also operates the only Level 1 Trauma Center—located at SF General—for the
14 1.5 million residents of San Francisco and northern San Mateo County. As required by law, the
15 City provides emergency care to *any* individuals, including nonresidents and the uninsured, who
16 seek medical care at SF General. (42 U.S.C. § 1395dd(a).)

17 44. Because the City is the health provider of last resort for the poor and uninsured, the
18 practice of gender rating has a substantial economic impact on its public health care system.

19 45. Many women in San Francisco cannot afford to purchase individual health insurance
20 because its cost is inflated by gender rating. These women must rely on the City to provide them
21 with any medical care that they need. These women also cannot pay the City for the full cost of the
22 medical goods and services it provides, and the City is required by law to bill certain uninsured
23 patients at discount rates. (Health & Saf. Code § 127400, et seq.)

24 46. Moreover, because uninsured or underinsured women often forgo necessary preventive
25 care and screening exams, they typically seek treatment only when their conditions have become
26 emergencies. At that point, the cost of treating those women becomes far more expensive than the
27 cost of providing preventive care or early detection.

1 47. The City is reimbursed for some, but not all, of the services it provides to uninsured
2 patients that seek care at SF-DPH facilities, including SF General, Laguna Honda Hospital, and SF-
3 DPH clinics. The City typically recovers less than 25% of the cost of treating uninsured persons
4 who are not participants in state or federal health assistance programs, like Medi-Cal and Medicare.

5 48. The City accordingly incurs significant costs as a result of the financial inaccessibility of
6 health insurance for California women caused by the practice of gender rating.

7 49. Moreover, gender rating significantly impairs the City's ability to meet the demand for its
8 emergency and other urgent health care services. Uninsured individuals are more likely to use
9 emergency room services in lieu of non-urgent care services, both because of their inability to get
10 private medical care and because of their greater need for acute care caused by the lack of
11 preventive care. Any increased use of urgent care facilities strains the ability of hospitals like SF
12 General to provide necessary care to all San Franciscans.

13 50. Gender rating and the resulting decrease in the number of individuals seeking preventive
14 care additionally impairs the ability of SF-DPH to manage the public health needs of San Francisco.
15 SF-DPH relies upon individuals seeking preventive care, vaccination, and other screening tests to
16 prevent public health problems such as the spread of infectious diseases and the community impact
17 of chronic health conditions such as diabetes and heart disease.

18 51. Further, because health-related expenses borne by uninsured and under-insured persons
19 are a leading cause of personal bankruptcies, practices like gender rating increase the number of
20 individuals seeking support services such as welfare and supportive housing from the City.

21 **CLAIM FOR RELIEF**

22 **(California Constitution., Article I, § 7;**

23 **California Constitution., Article IV, § 16;**

24 **Cal. Code Civ. Proc., § 1060.)**

25 52. The California Constitution prohibits the State from discriminating on the basis of sex.

26 53. Despite the constitutional prohibition against discrimination based on sex, Health and
27 Safety Code section 1365.5 and Insurance Code section 10140 explicitly permit insurers to charge
28 different monthly premium rates for health insurance, based solely on the sex of the purchaser. Yet,

1 these same two statutes prohibit discrimination in the benefits, coverage, and price of health
2 insurance on the basis of race, color, national origin, ancestry, religion, marital status, or sexual
3 orientation.

4 54. Health and Safety Code section 1365.5 and Insurance Code section 10140(a) are now and
5 have been in full force and effect in California since 1991 and 2006, respectively.

6 55. By authorizing health insurance companies to charge different premiums solely on the
7 basis of the sex of the insured, both Health and Safety Code section 1365.5 and Insurance Code
8 section 10140 violate the California Constitution's guarantee of equal protection under the law.
9 (Cal. Const., art. I, § 7; art. IV, § 16.)

10 56. Because the State authorizes the practice of gender rating through Health and Safety Code
11 section 1365.5 and Insurance Code section 10140, health insurance companies charge consumers
12 different rates solely on the basis of their sex. As a result, these statutes prevent a woman from
13 obtaining the same rates for individually purchased health insurance as a similarly situated man.

14 57. By authorizing the practice of gender rating, these statutes harm California women who
15 purchase health insurance on the individual market. Faced with inflated premiums caused by
16 gender rating, many California women must settle for reduced coverage or forgo health insurance
17 entirely. And in doing so, these women jeopardize their own health. By increasing the ranks of the
18 uninsured and under-insured and undermining the availability of preventive care, the Defendants
19 also impose huge costs and burdens on the City and other California public health care systems.

20 58. The State has no compelling interest in permitting health insurance companies to engage
21 in the discriminatory practice of gender rating. Rather, the State has proclaimed a statutory policy
22 in favor of affordable health insurance coverage for all Californians (Bus. & Prof. Code §657), and
23 has advocated a public policy of encouraging preventive medical care and treatment. Such policies
24 are not only in the interest of individual Californians but also advance the public health goals of the
25 State.

26 59. Defendants enforce the discriminatory provisions of Health and Safety Code section
27 1365.5 and Insurance Code section 10140 by issuing publications that inform consumers and
28 providers of health insurance that sex-based price discrimination is permissible, and by resolving

1 complaints of sex-based price discrimination in favor of the insurer if the sex-based differential is
2 purportedly based on statistical and actuarial data. The State permits this discrimination even
3 where the data does not in fact justify the dramatic differences in premiums charged to women and
4 men for health insurance policies.

5 60. Enabled by the State's action, health insurance companies charge consumers differential
6 rates in pricing solely on the basis of sex. This invidious practice of gender rating harms the City,
7 as well as individual women seeking to purchase health insurance, causing the latter to choose
8 among paying increased rates solely on the basis of their sex, purchasing health insurance with high
9 deductibles that discourage preventive care, or refraining from purchasing health coverage
10 altogether.

11 61. An active controversy has arisen and now exists between the City and the State
12 concerning whether it is legally permissible for the State to sanction invidious discrimination on the
13 basis of sex in the price of health insurance. The controversy is definite and concrete, and touches
14 on the legal relations of the parties, as well as many thousands of people not before this Court to
15 whom the City is legally bound to provide medical services.

16 62. The City has no plain, speedy, and adequate remedy in the ordinary course of law, and is
17 directly and beneficially interested in this dispute. Because insurance companies are allowed to
18 make pricing decisions solely on the basis of sex, resulting in large numbers of women who are
19 unable to obtain health insurance, the City bears the cost of providing care to many of these
20 uninsured individuals at SF General, Laguna Honda Hospital, and through its network of
21 community clinics. The City incurs significant financial costs attributable directly to the State's
22 enforcement of the unconstitutional provisions of Health and Safety Code section 1365.5 and
23 Insurance Code section 10140 that sanction price discrimination in health insurance based solely on
24 gender.

25 63. In order to resolve this controversy, the City requests, pursuant to Code of Civil Procedure
26 section 1060, that this Court declare the respective rights and duties of the parties. Specifically, the
27 City asks this Court to declare that the provisions of Health and Safety Code section 1365.5 and
28 Insurance Code section 10140—which permit health insurers to discriminate solely on the basis of

1 sex—deny women their right to equal protection under the law under the California Constitution,
2 and thus are void and unenforceable.

3 64. The City also requests that the Court enjoin the Defendants from enforcing the provisions
4 of Health & Safety Code section 1365.5 and Insurance Code section 10140 that permit differential
5 pricing of health insurance on the basis of the insured's sex.

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1 **PRAYER FOR RELIEF**

2 For the reasons set forth above, the City prays for relief as follows:

- 3 1. That the Court, pursuant to Code of Civil Procedure section 1060, declare that those
4 provisions of Health & Safety Code section 1365.5 and Insurance Code section 10140
5 that permit differential pricing of health insurance on the basis of the insured's sex are
6 unconstitutional, void, and unenforceable;
- 7 2. That the Court enjoin the Defendants from enforcing those provisions of Health &
8 Safety Code section 1365.5 and Insurance Code section 10140 that permit differential
9 pricing of health insurance on the basis of the insured's sex;
- 10 3. That the Court award the City its costs, including but not limited to attorneys' fees; and
- 11 4. That the Court grant any and all other relief to which the City may be justly entitled.

12 Dated: January 27, 2009

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Los Angeles Times

<http://www.latimes.com/business/la-fi-insure28-2009jan28,0,1425599.story>

From the Los Angeles Times

COURTS

California health insurers discriminate against women, lawsuit contends

San Francisco's city attorney sues state regulators, saying they approved a system that allows the insurance companies to use 'gender rating' when pricing individual policies.

By Nathan Olivarez-Giles

January 28, 2009

California insurers are discriminating against women, charging them more for individual health insurance than men, the city of San Francisco maintained in a lawsuit filed Tuesday against the state regulators who govern them.

The suit contends that Insurance Commissioner Steve Poizner and Cindy Ehnes, director of the Department of Managed Health Care, approved a system that allows the insurance companies to impose "gender rating" when pricing policies, resulting in women paying as much as 39% more for coverage than men.

At issue in the suit are rates for individuals and not group policies. These policies are often purchased by people who are unemployed or work for businesses that don't offer health insurance or adequate coverage.

The lawsuit contends that the state's existing health insurance laws are unfair to women and should be declared unconstitutional. Poizner's office disagreed and said the rates were in line with state law.

"The Department of Insurance implements the laws as passed by the Legislature," spokesman Darrel Ng said. "The Legislature explicitly lists gender as one of the factors to be considered. Until the Legislature changes the laws or the courts decide differently, we will uphold the law."

Ten states outlaw the practice of "gender rating" health insurance rates for individual coverage -- but not California.

The lawsuit is part of a flurry of activity in Sacramento and around the state seeking to end gender rating in health insurance.

Since December, two bills have been introduced in the Legislature to address the issue: AB 119 and SB 54.

If either of the two bills were signed into law, the suit against the state could be dropped, San Francisco City Atty. Dennis Herrera said. "If the law is changed to stop gender rating, then there's really not much need to go through with the suit," he said.

California's state insurance law says gender rating is legal when backed up by statistics.

"Unless otherwise prohibited by law, premium, price or charge differentials because of the sex of any individual when based on objective, valid and up-to-date statistical and actuarial data or sound underwriting practices are not prohibited," the law says.

The Times reported in June that insurers Aetna Inc. and Anthem Blue Cross charged women in California more than men for individual coverage and that Blue Shield of California was about to follow suit.

Blue Shield spokesman Tom Epstein said at the time, "Our egghead actuaries crunched the numbers based on all the data we have about healthcare" and found that women were more accident-prone than men and more likely to break bones or get sick.

"It's all about the statistics," he said.

Blue Shield of California declined to comment on the lawsuit Tuesday.

Herrera said the need for changing the law was urgent.

"A lot of times, women are priced out of private health coverage because of the discriminatory practices by insurance companies," he said. "This means women have to rely on public hospitals and clinics, and over the last few years we've seen an influx of women who can't afford insurance come into San Francisco General Hospital."

As the economic downturn worsens and the costs of healthcare rise, Herrera said, the numbers of those who can't afford healthcare will grow.

"Our state is really behind the curve on this one," he said. "When women can't afford healthcare because they're priced out of it, they're not the only ones who pay for it. These women have to turn to the public health system, a system that is already strained as it is, and every taxpayer ends up paying for it."

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